

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 9, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF Nos.: 10HD-094
& 10HD-096
Hawaii

Cancellation of Governor's Executive Order Nos. 1225 and 1588 and Reset Aside Portion to State of Hawaii, Department of Defense, for Youth ChalleNGe Academy and Hawaii Army National Guard Training Purposes, with an Access and Utility Easement Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 por.;

Cancellation of Governor's Executive Order No. 3678 and Grant of Perpetual Non-Exclusive Easement to Department of Defense for Access and Utility Purposes, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-4-08: por. & 1-8-12: por.

CONTROLLING AGENCY:

State of Hawaii, Department of Public Safety

APPLICANTS:

State of Hawaii, Department of Defense, and the Department of Land and Natural Resources, Division of Forestry and Wildlife

LEGAL REFERENCE:

Sections 171-11 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Keys: (3) 2-4-08:09, 2-4-08: & 1-8-12:, as shown on the attached maps labeled Exhibits A and D.

AREA / ZONING / TRUST LAND STATUS / CURRENT USE:

TMK 3rd/	AREA	ZONING		TRUST LAND		CURRENT USE
		SLU	CZO	STATUS	DHHL*	
				Adm. Act		
2-4-08:09	7,244.27 acres	Conserv.	Un- zoned	5(b)	No	Encumbered by Governor's Executive Order (GEO) Nos. 1225 and 1588
2-4-08 por & 1-8-12 por	149.432 acres	Conserv.	Un- zoned	5(b)	No	Encumbered by Governor's Proclamation (GP) of 10/13/1913 for the Upper Waiakea Forest Reserve, as modified by GP dated 1/3/1923; GP dated 12/31/1918 for the Olaa Forest Reserve; GP dated 1/3/23 for the Waiakea Forest Reserve; and GEO No. 3678

*None of the land is DHHL 30% entitlement land pursuant to the Hawaii State Constitution.

PURPOSE OF SET ASIDE / GRANT OF EASEMENT:

A portion of TMK: (3) 2-4-08:09 is to be set aside to the State of Hawaii, Department of Defense, for Youth ChalleNGe Academy and Hawaii Army National Guard Training purposes, with an access and utility easement reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife (PSF No. 10HD-094).

A perpetual, non-exclusive easement for access and utilities will be granted to the Department of Defense, over portions of TMKs: (3) 2-4-08: and 1-8-12: (PSF No. 10HD-096).

EASEMENT CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

EASEMENT COMMENCEMENT DATE:

To be determined by Chairperson.

EASEMENT CONSIDERATION:

Gratis.

EASEMENT TERM:

Perpetual.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

For the cancellation of Executive Order Nos. 1225 and 1588 and reset aside portion to the Department of Defense, with the reservation of an access and utility easement in favor of the Division of Forestry and Wildlife, see Exemption Notification attached as Exhibit B.

For the cancellation of Executive Order No. 3678 and the grant of a perpetual, non-exclusive easement to the Department of Defense for access and utility purposes, see Exemption Notification attached as Exhibit C.

The subject lands are within the Conservation District, General, Resource and Protected Subzones. Applicants will be responsible for complying with any Conservation District permit requirements applicable to their projects.

APPLICANT REQUIREMENTS:

- 1) Applicant Department of Defense (DOD) shall be required to process and obtain subdivision at applicant's own cost, if required;
- 2) Applicant DOD shall be required to provide survey maps and descriptions according to State DAGS standards and at applicant's own cost; and
- 3) Applicants DOD and the Division of Forestry and Wildlife (DOFAW) shall reach an agreement between themselves regarding access by DOFAW over the internal roads of the DOD set-aside area, the parties' maintenance obligations for the internal roads, conditions under which public access will be permitted, etc. The agreement should also address shared maintenance responsibilities for Stainback Highway. The form of agreement will need to be presented to the Board within three months.

REMARKS:

At the time it shut down in November 2009, the Kulani Correctional Facility (KCF), also known as the Kulani Prison Farm and Kulani Prison Facility, was operated by the Department of Public Safety (PSD) on Mauna Loa's eastern flank as a 200-bed correctional facility, and included job-training for inmates in agricultural industries. As discussed below, PSD has decided to relinquish its interest in most of the State lands

comprising KCF to the State Department of Defense and the Department of Land and Natural Resources, Division of Forestry and Wildlife.

KCF began as a work camp in 1946. The first lands for KCF were withdrawn from the Upper Waiakea Forest Reserve and Upper Olaa Forest Reserve and set aside to the Department of Institutions (DOI) in 1948 pursuant to Governor's Executive Order Nos. 1224 and 1225. The area of the set-aside under Executive Order No. 1225 was 5,600 acres. In 1953, another 2,300.27 acres were withdrawn from the Upper Waiakea Forest Reserve and set aside to DOI as an addition to KCF. In 1981, Executive Order No. 3092 withdrew 656 acres from the set-aside under Executive Order No. 1225 for inclusion in the Puu Makaala Natural Area Reserve. The additions and withdrawals under these executive orders result in the current area of 7,244.27 acres under Tax Map Key: (3) 2-4-08:09 (Parcel 9), located between the 4,500' and 6,200' elevations of the mountain.

In 1951, Executive Order No. 1426 set aside 492.5 acres at approximately the 800' elevation of the mountain to DOI as an addition to KCF. This land was subsequently used for pasture.

At its meeting of July 25, 1986, Item F-1-c, the Board approved the issuance of a month-to-month revocable permit to Kulani Correctional Facility, Department of Social Services and Housing (DSSH), for parking and storage/distribution point for vendors, and related uses on 40,000 square feet under a revocable permit used as a staging area at Panaewa, Waiakea, South Hilo, at approximately the 300' elevation. Revocable Permit No. S-6445 was thereafter executed effective as of July 26, 1986. PSD eventually took over this permit from DSSH.

In 1995, Executive Order No. 3678 set aside a perpetual, non-exclusive easement over the Stainback Highway to DOI's successor agency, PSD, for access and utility purposes to KCF. The easement extends over 15 miles from the eastern boundary of Parcel 9, across TMKs: (3) 2-4-08: por. & 1-8-12: por., and terminates near the Panaewa Zoo Complex. It is 80 feet wide.

The present request relates to Parcel 9 and the easement over Stainback Highway. PSD has requested the cancellation of the executive orders covering these lands, and DOD has requested the reset aside of a portion of Parcel 9 to it as well as an easement over the Stainback Highway.¹ PSD will retain the pasture lands at the 800' elevation. At its meeting of June 10, 2010, Item D-22, the Board approved the request of PSD and DOD

¹ By separate request to the Board, DOFAW will seek to have approximately 6,600 acres of the forest lands at KCF included in the Puu Makaala Natural Area Reserve. This area has been designated as critical habitat by the U.S. Fish and Wildlife Service, and is also included in the Three Mountain Alliance Watershed Partnership. There are certain hearing procedures DOFAW must follow before the Board can act on DOFAW's request for a set-aside of the 6,600 acres to it.

for the cancellation of Revocable Permit No. S-6445, and the issuance of a new revocable permit to DOD for parking and storage/distribution point for vendors, and related uses.

DOFAW has proposed to add the remaining portions of Parcel 9 to the Puu Makaala Natural Area Reserve, and DOD and DOFAW have agreed to tentative boundaries for their respective areas as shown in Exhibit D. DOD is requesting the set-aside of approximately 600 acres surrounding the improved portion of KCF together with the internal roads on Parcel 9 shown in purple on Exhibit D for the operation of a Hawaii National Guard Youth ChalleNGe Academy (YCA) program and Hawaii Army National Guard training. The YCA program "provides opportunities for at-risk, non-traditional students to learn life skills to become productive, responsible and successful citizens, while working towards their high school diploma." The following excerpt is from the National Guard YCA website:

The Hawaii National Guard Youth ChalleNGe Academy is very successful with its 16-19 year old youth in a non-traditional program. Eighty-three percent of the youth that volunteer for our quasi-military based 17-month program (5 months residential and 12 months post-residential) will receive their high school diploma. Those youth would never have earned their diploma otherwise in a traditional school setting. We have made some astounding progress in redirecting the lives of these youth. Our Cadets who complete the program are very proud to say that most of our graduates are now productive, respectable, and responsible citizens in our community.

Located on the 600 acres are the main camp site, reservoir, solid waste transfer station, quarry, wastewater treatment facility, piggery, green house, pasture area, former boys school, and all roadways associated with operations and maintenance that connect these areas. In conjunction with the YCA program, DOD intends to continue the operation of the existing piggery and green house, and utilize the pasture for raising cattle. DOD intends to coordinate with DLNR on environmental and conservation education for students of the YCA. In conjunction with the Hawaii Army National Guard training on the 600 acres, DOD intends to develop and operate a short distance range, conduct Military Operations on Urban Terrain (MOUT) at the former boys school, conduct company size and lower level training along roadways and the pasture area, and develop landing zones in the pasture and near the camp for emergency evacuation and training.

The executive order setting aside these areas of Parcel 9 to DOD will reserve an easement for access and utility purposes to DOFAW to allow DOFAW to access and manage the Puu Makaala NAR.

With respect to the Stainback Highway easement, staff understands that the Department of the Attorney General (DAG) no longer processes set-asides of easements that do not

have a legal disposition separate from an executive order. Accordingly, staff proposes that a grant of easement over the Stainback Highway be made to DOD by land office deed. Stainback Highway was never withdrawn from the Waiakea, Upper Waiakea and Olaa Forest Reserves. Accordingly, DOFAW will retain a degree of control and management of the highway after the grant of the easement to DOD. Under this arrangement, DOD and DOFAW will need to agree on their mutual responsibilities for road maintenance and liability in a separate memorandum of agreement.

There is no County zoning applicable to the lands affected by the proposed uses. To date, there are no other applicants requesting use of the subject parcel. In light of the closure of KCF as a corrections facility in November 2009, staff knows of no alternative highest and best use of the subject land. The requested disposition fully utilizes the land.

Comments were solicited from the government agencies identified below with the results indicated.

Agency	Comment
DLNR / Office of Conservation and Coastal Lands	See comments attached as Exhibit E.
DLNR / Historic Preservation	No response.
DLNR / Water Resource Management	No response.
Department of Public Safety	DPS strongly supports the request because it will promote education and job training for Hawaii's youth using part of the land while conserving the remainder
Department of Agriculture	No comments.
Department of Transportation / Airports Division	No comments.
Department of Health / Environmental Division	No comments at this time. Recommends that State and County planning departments use Healthy Community Design Smart Growth Checklist available at DOH website.
Office of Hawaiian Affairs	No response.
County of Hawaii Planning Department	No response.
County of Hawaii Police Department	Does not anticipate any impact to traffic or public safety concerns.
County of Hawaii Fire Department	No comments.
County of Hawaii Department of Public Works	No response.

Agency	Comment
U.S. Fish & Wildlife Service	See comments attached as Exhibit F.
Federal Aviation Administration	No response.
Department of the Army	No response.
Three Mountain Alliance Watershed Partnership	No response.

The comments received from the Office of Conservation and Coastal Lands (OCCL) state that DOD should obtain a Conservation District Use Permit (CDUP) prior to the land being set aside to DOD for Hawaii Army National Guard training purposes. OCCL adds that should the disposition proceed before DOD secures the CDUP, the set-aside should be conditioned to ensure compliance with Hawaii Revised Statutes Chapters 183C and 343. See Exhibit E.

Staff understands that DOD needs to secure management authority over the former prison facility in order to secure funding for its YCA program. Accordingly, staff is processing DOD's request as submitted, but is including OCCL's suggested conditions in the recommendations below. As explained in the Exemption Notifications attached as Exhibits B, the set-aside to DOD is only a transfer of management jurisdiction, and DOD will be required to comply with HRS Chapter 183C, 343 and other laws applicable to its use of the land prior to commencing Hawaii Army National Guard training on the land.

The U.S. Fish and Wildlife Service (USFWS) explains that there are critical habitat endangered, threatened and candidate species within the DOD project area. USFWS advises that DOD and other action agencies will need to comply with the Endangered Species Act of 1973, as amended (16 USC Sections 1531, et seq.) if a listed species or critical habitat may be affected by any future actions on the subject parcels. The USFWS comments provide a list of federally listed species and critical habitats in the project area. See Exhibit F attached. Staff is including a recommendation below that DOD comply with the Endangered Species Act and any other applicable federal laws prior to commencing Hawaii Army National Guard training on the land, or other actions that trigger application of such laws.

RECOMMENDATION:

That the Board, subject to the Applicants fulfilling all of the Applicant requirements listed above:

1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order Nos. 1225, 1588 and 3678 and subject to the following:

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside a portion of Tax Map Key: (3) 2-4-08:09 to the State of Hawaii, Department of Defense, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. Reservation to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of an easement for access and utility purposes over the internal roads within the area set aside to Department of Defense;
 - B. Prior to using the land or any portion thereof for Hawaii Army National Guard training purposes, or for any other use that triggers environmental review under Hawaii Revised Statutes Chapters 183C or 343, as amended, or that requires compliance with the Endangered Species Act, 16 USC Section 1531, et seq., the Department of Defense shall comply with such laws and any other applicable State, Federal or County of Hawaii laws, rules and regulations;
 - C. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - D. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - E. Review and approval by the Department of the Attorney General; and
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a perpetual non-exclusive easement to the State of

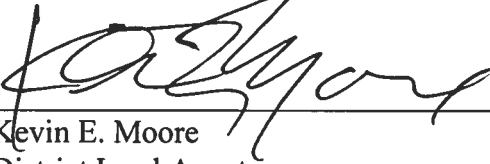
Hawaii, Department of Defense, covering the Stainback Highway for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time.
4. Grant an immediate management right-of-entry to the State of Hawaii, Department of Defense, its consultants, contractors and/or persons acting for or on its behalf, over its portion of Tax Map Key: (3) 2-4-08:09 and the Stainback Highway under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - B. Prior to using the land or any portion thereof for Hawaii Army National Guard training purposes, or for any other use that triggers environmental review under Hawaii Revised Statutes Chapters 183C or 343, as amended, or that requires compliance with the Endangered Species Act, 16 USC Section 1531, et seq., the Department of Defense shall comply with such laws and any other applicable State, Federal or County of Hawaii laws, rules and regulations;
 - C. This management right-of-entry is effective upon the full execution of the right-of-entry permit and shall continue until the grant of easement document is issued; and
 - D. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.
5. Grant an immediate management right-of-entry to the Department of Land and Natural Resources, Division of Forestry and Wildlife, its consultants, contractors and/or persons acting for or on its behalf, over the reserved easements on Tax Map Key: (3) 2-4-08:09 under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current right-of-entry form as may be amended from time to time;
 - B. This management right-of-entry is effective upon the full execution of the right-of-entry permit and shall continue until the grant of easement

document is issued; and

- C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,

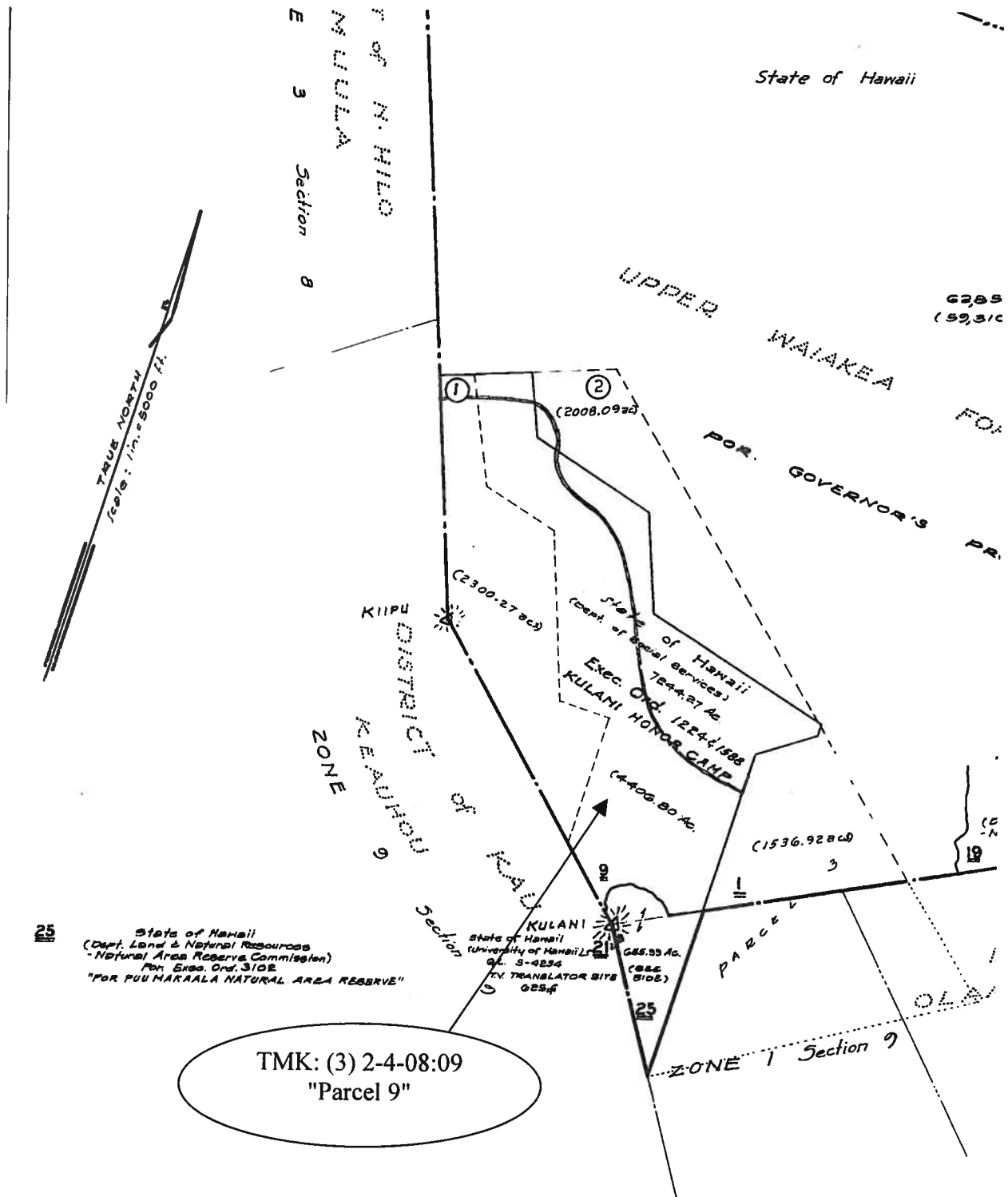


Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



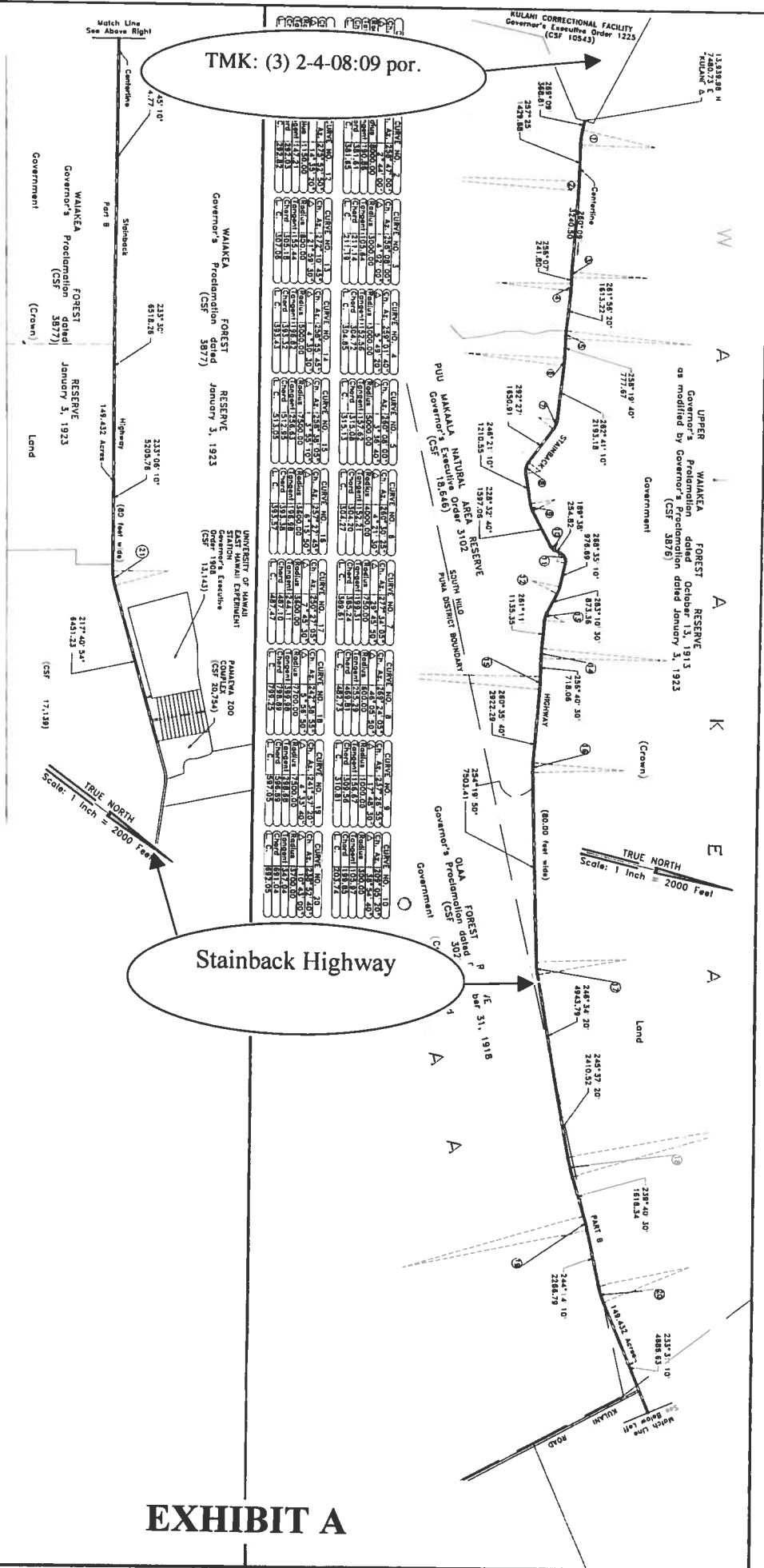
Laura H. Thielen, Chairperson



For. of PANAEWA, UPPER WAIAKEA, & WAIAKEA F.R., S. HILO, HAWAII.

EXHIBIT A

Reported Non-Lecture Book
Oral History Segment
Oral of Exponent State of Mead
to Pura Macedonia dated Sept 9, 1928
Jbar 22365 Page 768 (L.O.D. 5-27705
(CS- 20,699)



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
SURVEY DIVISION

Paul T. Muno - State Land Surveyor

**PORTION OF STAINBACK HIGHWAY
PART B**

Waialeale, South Hilo and Oloa, Puna, Island of Hawaii, Hawaii

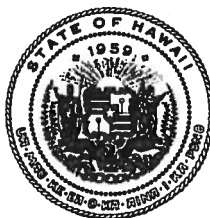
Scale: 1 inch = 2000 Feet

Tracing by: W. Aona Jr.
April 3, 1990
Job No. H-350(89)

For Description See CSF 21,273

$$21 \times 32 = 4.67 \text{ S.F.}$$

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Cancellation of Governor's Executive Order Nos. 1225 and 1588 and Reset Aside Portion to State of Hawaii, Department of Defense (DOD), for Youth ChalleNGe Academy and Hawaii Army National Guard Training Purposes, with an Access and Utility Easement Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW)

Project Number: PSF No. 10HD-094

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09

Project Description: Cancel existing executive orders and reset aside portion of land to DOD for Youth ChalleNGe Academy, while reserving an easement for access and utility purposes to DOFAW

Consulted Parties: Office of Conservation and Coastal Lands; County of Hawaii Planning Department; and others

Exemption Class No.: In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."

EXHIBIT B

**Exemption Item No.
And Description:**

Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This exemption is appropriate because DOD will assume management of a portion of the area previously set aside to the Department of Public Safety, which includes the maintenance responsibilities as described in the exemption. The reservation of an access and utility easement in favor of DOFAW's within the set aside area does not result in an expansion in use of the area.

While this action is part of a multi-phase project, the approval of the set-aside in itself will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, DOD and/or DOFAW, as applicable, will be required to be in compliance with Chapter 343.

Recommendation:

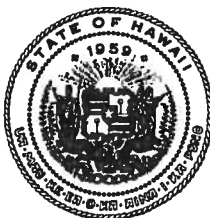
The transfer of management jurisdiction over the lands to DOD in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the transfer is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, DOD and/or DOFAW, as applicable, shall be responsible for compliance with Chapter 343, HRS, as amended.

Laura H. Thielen, Chairperson

Date

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Cancellation of Governor's Executive Order No. 3678 and Issuance of Perpetual Non-Exclusive Easement to Department of Defense for Access and Utility Purposes 2-4-08: por. & 1-8-12: por.

Project Number: PSF No. 10HD-096

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-4-08: por. & 1-8-12: por.

Project Description: Cancel existing executive order and issue a perpetual non-exclusive easement over the land to DOD for access and utility purposes in conjunction with its use of the former Kulani Correctional Facility site for a Youth ChalleNGe Academy and Hawaii Army National Guard Training

Consulted Parties: Office of Conservation and Coastal Lands; County of Hawaii Planning Department; and others

Exemption Class No.: In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."

EXHIBIT C

**Exemption Item No.
And Description:**

Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This exemption is appropriate because DOD will assume maintenance responsibility for a portion of the Stainback Highway previously set aside to the Department of Public Safety (PSD). Furthermore, the easement will continue to be used by DOD in ways that do not materially expand the use that existed when PSD operated the Kulani Correctional Facility, which was serviced by the Stainback Highway easement.

While this action is part of a multi-phase project, the cancellation of the existing executive order and grant of an easement for the limited purposes will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, DOD will be required to be in compliance with Chapter 343.

Recommendation:

The grant of an access and utility easement to DOD in itself will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment. It is recommended that the Board of Land and Natural Resources find that the grant of easement is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, DOD shall be responsible for compliance with Chapter 343, HRS, as amended.

Laura H. Thielen, Chairperson

Date

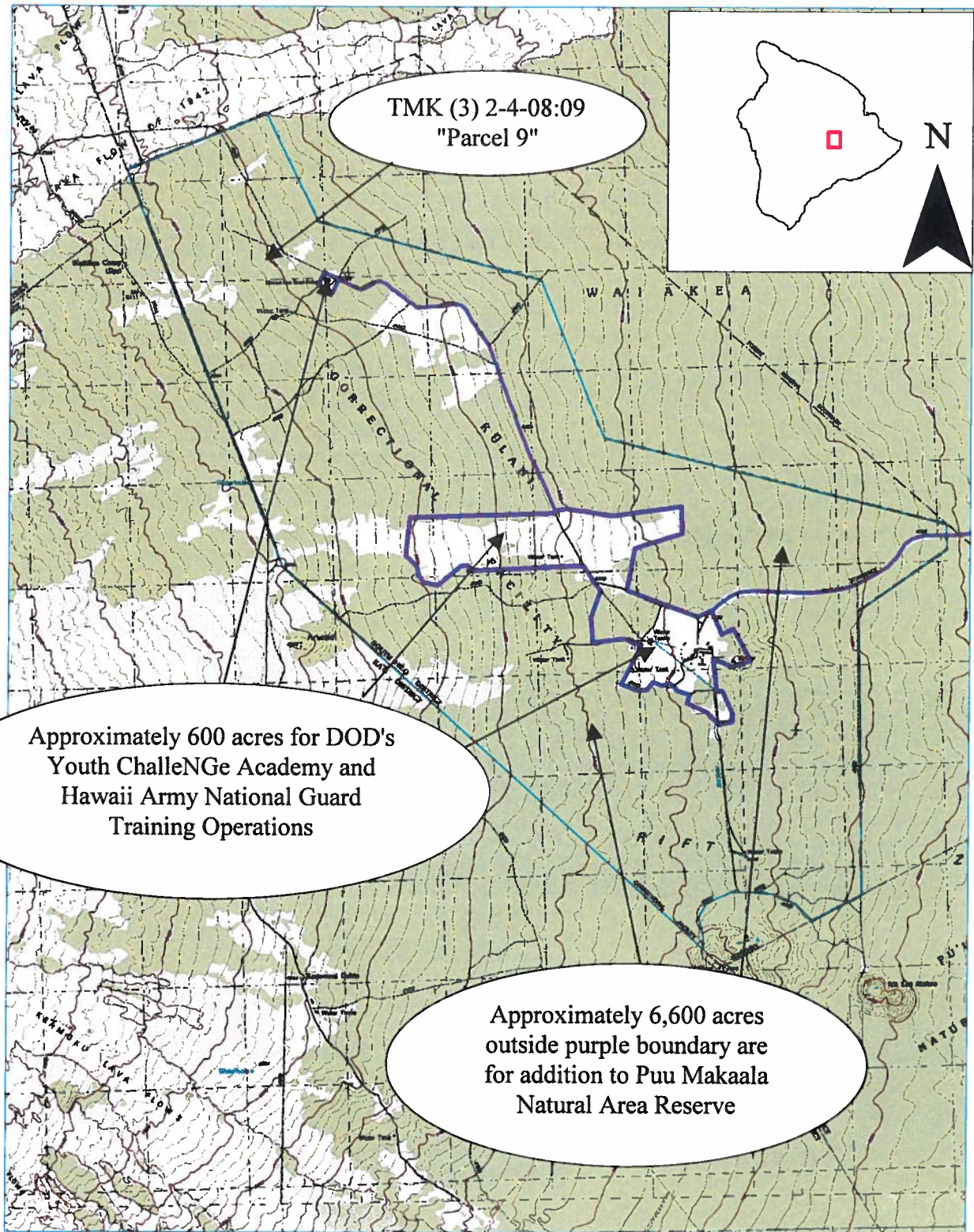
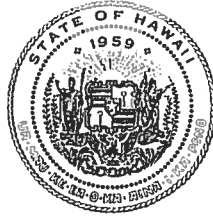


EXHIBIT D

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
ACTING FIRST DEPUTY

LENORE N. OHYE
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

Correspondence: HA 11-03

MEMORANDUM

TO: Kevin E. Moore, District Land Agent
Hawaii District Land Office

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Former Kulani Correctional Facility Located at Upper Waiakea Forest Reserve,
island of Hawaii, TMK: (3) 2-4-008:009

JUL 30 2010

The Office of Conservation and Coastal Lands (OCCL) has reviewed your draft report regarding the cancellation of EOs and reset asides for the subject location. As stated in the draft, the subject parcel does appear to lie within the Protective, Resource and General subzones.

In regards to the proposed land uses of the area, we have no objections to the access and utilities easements and the use of the existing facilities for the Youth Challenge Academy. However, new construction for the Youth Academy may require the filing of a Conservation District Use Application (CDUA).

Regarding the Department of Defense (DOD) Hawaii Army National Guard Training and Military Operations on Urban Terrain, training along roadways and the pasture area and developing landing zones in the pasture and near the camp for emergency evacuation and training; this proposed use would require the filling of a CDUA under Public Purpose Use and compliance with Chapter 343, Hawaii Revised Statutes (HRS) for a Board permit as this would be a new use of the area.

To approve, modify or deny the proposal would be at the discretion of the Board of Land and Natural Resources. A Conservation District Use Permit for National Guard Training should be obtained prior to the reset aside to DOD for Army National Guard Training. However, should you decide to pursue the reset aside for National Guard Training at this time, it should be conditioned to insure compliance with §§183C & 343, HRS. Should you have any questions regarding this memorandum, contact Tiger Mills of our Office at (808) 587-0382.

C: Chairperson
DOFAW

EXHIBIT E



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

In Reply Refer To:
2010-TA-0397

AUG 10 2010

Mr. Kevin E. Moore
District Land Agent
Department of Land and Natural Resources Land Division
State of Hawaii
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Subject: Technical Assistance for Cancellation of Governor's Executive Order Nos. 1225, 1588, and 3678, and Reset Aside of Land – Waiakea, South Hilo, Hawaii

Dear Mr. Moore:

Thank you for your July 13, 2010 letter requesting our comments on the above-referenced action involving State lands [TMK: (3)2-4-008:009 por.; 2-4-008: por.; & (3)1-8-012: por.]. We received your letter on July 15, 2010. Thank you for clarifying during our July 22, 2010 telephone conversation, the locations of the portions of the subject TMKs, and extending the comment deadline until August 10, 2010. In November 2009, the State of Hawaii Department of Public Safety (PSD) closed the Kulani Correctional Facility (KCF). The majority of the project area, referred to as Parcel 9 [TMK: (3)2-4-008:009 por.], is located between 4,500 and 6,200 feet (1,371.60 and 1889.76 meters) in elevation on Mauna Loa's eastern flank. The rest of the project area is comprised of a segment of a perpetual, non-exclusive easement over the Stainback Highway, which extends over 15 miles (24.14 kilometers) from the eastern boundary of Parcel 9, across TMKs: (3)2-4-008: por. and (3)1-8-012: por., terminating near the Panaewa Zoo Complex.

The proposed action entails PSD's proposed relinquishment of its interest in most of the KCF area to the State of Hawaii Department of Defense (DOD) and the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) (the cancellation of the executive orders covering Parcel 9 and the easement over Stainback Highway). In addition, DOD requested the reset aside (transfer of land ownership) of a portion of Parcel 9 and all of the Stainback Highway to it. The portion of Parcel 9 that DOD is requesting to reset aside is comprised of the approximately 600 acres (243 hectares) surrounding the improved portion of KCF. DOD plans to use this portion of Parcel 9 to operate a Hawaii National Guard Youth Challenge Academy program, a project which is not detailed in your letter. DOFAW has proposed to add the remaining portions of Parcel 9, approximately 6,600 acres (2,671 hectares),

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EXHIBIT F

to the Puu Makaala Natural Area Reserve, and DOD and DOFAW have agreed to tentative boundaries for their respective areas. Under the arrangement proposed for the Stainback Highway easement, DOD will have primary responsibility for the road, and DOFAW will have the right to use it for its purposes.

Your letter indicates that the easement character of use involves the “[r]ight, privilege, and authority to construct, use, maintain, and repair a right-of-way over, under, and across State-owned land for access and utility purposes.” Your letter further indicates that “[i]n conjunction with the Hawaii Army National Guard training on the 600 acres, DOD intends to develop and operate a short distance range, conduct Military Operations on Urban Terrain training at the former boys school, . . . and develop landing zones in the pasture and near the camp for emergency evacuation and training.” Because the details of these and other actions are not provided in your letter, our review does not address potential impacts of these projects. However, please be aware of the responsibilities action agencies or applicants will have pursuant to the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*) if a listed species or critical habitat may be affected by any future actions on the subject parcels.

Based on our review of the information you provided and pertinent information in our files, including data compiled by the Hawaii Biodiversity and Mapping Program and the Hawaii GAP, critical habitat and endangered, threatened, and candidate species are found within the project area (Enclosure). If a proposed project may affect a federally listed species or critical habitat and is funded, authorized, or carried out by a federal agency, the federal agency would consult with us pursuant to section 7(a)(2) of the Endangered Species Act. If a proposed action does not have a federal nexus, the project applicant would obtain an incidental take permit pursuant to section 10(a)(2)(B) of the Endangered Species Act if incidental take of a federally listed species cannot be avoided.

We hope our comments assist you with your future planning efforts. Please contact Dawn Greenlee, Fish and Wildlife Biologist (phone: 808-792-9469; fax: 808-792-9581), or Mele Coleman, Program Analyst (phone: 808-792-9470; fax: 808-792-9581) in our Consultation and Habitat Conservation Planning Program if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Loyal Mehrhoff", with a long horizontal flourish extending to the right.

for Loyal Mehrhoff
Field Supervisor

Enclosure

Enclosure: Federally listed species and critical habitats in the project area.**Plant species and critical habitat in project area**

Common or Hawaiian Name	Scientific Name	Federal Status¹	Critical Habitat
Mauna Loa silversword	<i>Argyroxiphium kauense</i>	E	Yes
n/a	<i>Asplenium peruvianum</i> var. <i>insulare</i>	E	No
Oha wai	<i>Clermontia lindseyana</i>	E	Yes
Haha	<i>Cyanea shipmanii</i> spp.	E	Yes
Haha	<i>Cyanea stictophylla</i>	E	No
Aku	<i>Cyanea tritomantha</i>	C	No
Ha iwale	<i>Cyrtandra giffardii</i>	E	Yes
Laukahi kuahiwi	<i>Plantago hawaiensis</i>	E	Yes
Kiponapona	<i>Phyllostegia racemosa</i>	E	Yes
n/a	<i>Phyllostegia velutina</i>	E	Yes
Anunu	<i>Sicyos alba</i>	E	Yes

Animal species and critical habitat in project area

Common or Hawaiian Name	Scientific Name	Federal Status¹	Critical Habitat
Hawaiian goose	<i>Branta sandvicensis</i>	E	No
Hawaiian hawk	<i>Buteo solitaires</i>	E	No
Hawaii picture-wing fly	<i>Drosophila</i> spp. (12)	E (11), T (1)	Yes
Akiapola au	<i>Hemignathus munroi</i>	E	No
Hawaiian hoary bat	<i>Lasiurus cinereus semotus</i>	E	No
Hawaii akepa	<i>Loxops coccineus coccineus</i>	E	No
Hawaii creeper	<i>Oreomystis mana</i>	E	No
Hawaiian petrel	<i>Pterodroma phaeopygia sandwichensis</i>	E	No
Newell's shearwater	<i>Puffinus auricularis newelli</i>	T	No

¹E= endangered, T= threatened, C = candidate